

**IN THE HIGH COURT OF SOUTH AFRICA
(BOPHUTHATSWANA PROVINCIAL DIVISION)**

CC 42/05

In the matter between:

THE STATE

AND

STEPHEN MMOLAENG

MMABATHO

MONAMA AJ

JUDGMENT

MONAMA AJ:

[1] The accused was sentenced in the Regional Court at Mmabatho on the charge of rape. The accused is the uncle to the complainant who is approximately fourteen years of age. At the time of the alleged offence the complainant was only eleven years old. The accused was charged during May 2003, some three years after the event.

[2] The accused denied the allegations against him and stated that during

the period June 2000 the complainant was staying with her parents in R.... In short the accused defence is alibi.

- [3] The State lead evidence of two witnesses, the complainant and her mother. On the other hand the defence lead the evidence of one witness, one Mrs More the class teacher of the complainant. This witness testified that during the year 2000 the complainant was not a pupil in M....
- [4] The complainant and her witness did not provide any reason why they insisted that the complainant was attending school in M.P.S... in R.... The cross-examination on this aspect is not extensive. The complainant merely stated:
“I started school at R... in 2001 January”.
See page 7 of the record.

In addition to this assertion the complainant testified that her witness visited her during 2000 when she was still staying in M....

- [5] The accused and his witness did not give reasons why they testified that the complainant was removed from the school in M... during 1999. The accused's witness produced an illegible document which the Court *a quo* found useless.
- [6] The date of the alleged rape is crucial.
- [7] I make the following order:
- 7.1 The Magistrate is ordered to reconstruct the record using his handwritten notes to correct the problem highlighted by the transcribers;
 - 7.2 The Magistrate is ordered to obtain the certified or original transfer or removal letter in respect of the complainant when she left the school in M...;
 - 7.3 The Magistrate is ordered to obtain the original or certified copy

of the enrolment document or an affidavit demonstrating the date, month and year of the complainant's first enrolment at M.P.S... in R...;

- 7.4 The Magistrate is ordered to caused Exhibits C1 and C 2 which were provisionally admitted to be attached to the record;
- 7.5 The reconstructed record and information above to be furnished to the Registrar of this Court and the Director of Public Prosecution on or before the end of business on the Friday of the third week of April 2005;
- 7.6 The matter be and is hereby postponed to the 3rd of May 2005; and
- 7.7 As this matter is not part-heard it can be dealt with by any other Judge.

R E MONAMA

ACTING JUDGE OF THE HIGH COURT

COUNSEL FOR THE STATE : ADV KHUMALO

COUNSEL FOR THE DEFENCE : MS V M MOPHULANE

DATE OF HEARING : 17 MARCH 2005

DATE OF JUDGMENT : 17 MARCH 2005